

Application No.: 10/686,812Docket No.: 2038-302**REMARKS**

Applicants appreciate the Examiner's thorough review of the present application, and respectfully request reconsideration in light of the preceding amendments and the following remarks.

Claims 1-22 are pending in the application. The original claims have been amended to better define the claimed invention. New claims 19-22 have been added to provide Applicants with the scope of protection to which they are believed entitled. The amended and added claims find solid support in the original specification, e.g., at page 10, line 2; page 11, lines 4-9 and 12-13; page 16, line 8, as well as the original drawings. No new matter has been introduced through the foregoing amendments.

The art rejections relying on *Mishima* (EP 1243237) are believed overcome in view of the above amendments.

In particular, amended claim 1 now requires that the opening of the tubular protrusion be enlarged upon compression thereof. The highlighted claim feature finds support in at least FIGs. FIGs. 2, 3, and 8 of the instant application. The opening 28 in FIG. 2 of the *Mishima* reference appears to be constant regardless of the compressive state of the bellows guide 29. Thus, amended claim 1 is patentable over the applied reference.

Claims 2-6 and 8-20 depend from claim 1, and are considered patentable at least for the reason advanced with respect to amended claim 1. The claims are also patentable on their own merits since these claims recite other features of the invention neither disclosed, taught nor suggested by the applied art.

As to claim 2, the applied reference does not appear to fairly teach or suggest that the protrusion consists of a single block of said foamed plastic material. Bellows guide 29 of *Mishima*

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is not deemed made of the foamed material of element 32.

As to claim 3, the applied reference does not appear to fairly teach or suggest the claimed chips arranged in layers one on top another. The "chips" 44 of *Mishima* are arranged in a single layer as can be seen in FIG. 4 of the reference.

As to claims 4, 14, 16-18 the Examiner's optimization rationale is improper, because "a particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation." *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977) discussed in MPEP section 2144.05. II. B. In this particular case, application of *In re Aller* might be proper only if the art, prior to the present invention, has recognized the claimed parameter as a result-effective variable. The Examiner has produced no evidence to prove this point.

As to claim 6, the applied reference does not appear to fairly teach or suggest the claimed height of said protrusion gradually increases toward at least one of said front and rear end segments and is maximal at an apex on a longitudinal center line of said wearing article. The Examiner's reliance on FIG. 6 of *Mishima* for the claimed feature is noted. FIG. 6 is a cross sectional view of FIG. 5 which appears to disclose that the height of the protrusion is about constant.

As to claim 9, the applied reference does not appear to fairly teach or suggest the claimed pair of said protrusions. The Examiner's reliance on FIG. 6 of *Mishima* for the claimed feature is noted. FIG. 6 shows, however, only a single protrusion.

As to claim 10, the applied reference does not appear to fairly teach or suggest the claimed protrusion that extends over said crotch region further into both said front waist region and said rear waist region for surrounding both the anus and the urethral orifice of the wearer.

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As to claim 11, the applied reference does not appear to fairly teach or suggest the claimed pocket wherein a portion of said backsheets being exposed, at a bottom of said pocket, through said opening and said tubular protrusion. *See, e.g., FIGS. 3 and 6 of Mishima.*

As to claim 12, the applied reference does not appear to fairly teach or suggest the claimed top surface convex upward as viewed in a cross-section of said protrusion. The Examiner's reliance on FIG. 6 of *Mishima* for the claimed feature is noted. FIG. 6 shows, however, only a flat top at 31.

As to claim 15, the applied reference does not appear to fairly teach or suggest the claimed thermoplastic synthetic fibers which make up at most 40 wt% of said filler.

As to claim 19, the applied reference does not appear to fairly teach or suggest the claimed thermoplastic synthetic fibers mixed with said chips to fill gaps between adjacent said chips.

As to claim 20, the applied reference does not appear to fairly teach or suggest that the claimed chips have different sizes and irregular shapes.

As to claim 7, the applied reference does not appear to fairly teach or suggest the claimed U-shape, notwithstanding the Examiner's reliance on FIG. 6 of *Mishima*. In particular, *Mishima* appears to teach only tubular, rather than U shaped protrusion.

Claim 21 depends from claim 7, and are considered patentable at least for the reason advanced with respect to amended claim 7. As to claim 21, the applied reference does not appear to fairly teach or suggest the claimed obliquely upward wall of the U-shape protrusion.

As to claim 22, note the discussion *supra* with respect to claim 11.

Each of the Examiner's rejections has been traversed. Accordingly, Applicants respectfully submit that all claims are now in condition for allowance. Early and favorable indication of

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allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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